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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NAYELI MENDEZ & HECTOR) No. C 07-2544 VRW
MARTINEZ,)
Plaintiff,) JOINT CASE MANAGEMENT
v.) STATEMENT AND [PROPOSED]
UNITED STATES OF AMERICA,) ORDER
Defendant.) Date: August 21, 2007
_____) Time: 9:00 a.m.
_____) Place: Courtroom 6, 17th Floor

The parties jointly submit this Case Management Statement and request that the Court adopt it as its Case Management Order in this action.

1. Jurisdiction and Service

This Court has jurisdiction over this matter because it arises under the Federal Tort Claims Act, 28 U.S.C. §1346(b).

2. Facts

This is a wrongful death action in which Plaintiffs, Ms. Mendez and Mr. Martinez, allege that Dr. Philipp Bannwart, a physician at La Clinica de la Raza (Fruitvale Health Project in Oakland, CA), negligently delayed a Cesarean section and attempted a vacuum extraction of their son Isaac Mendez. Plaintiffs' allege that Dr. Bannwart's actions caused the death of their son.

1 La Clinica de la Raza is a federally supported health center under the Federally
2 Supported Health Centers Assistance Act of 1992.

3 **3. Legal Issues**

- 4 a. Whether or not Defendant met the requisite standard of care for the procedures
performed.
5 b. Nature and extent of Plaintiff Mendez' alleged emotional damages.
6 c. Issue of causation of injuries.

7 **4. Motions**

8 It is difficult to assess at this juncture prior to discovery, but, Defendant may file a
9 motion for summary judgment on the issue(s) of standard of care, causation and/or informed
10 consent.

11 **5. Amendment of Pleadings**

12 None anticipated.

13 **6. Evidence Preservation**

14 Parties are taking, and will continue to take, all reasonable steps to preserve any
15 evidence relevant to the issues reasonably evident in this lawsuit. Parties are not presently aware
16 of any document destruction programs that would apply in this case.

17 **7. Disclosures**

18 Parties will exchange initial disclosures prior to the case management conference.

19 **8. Discovery Taken to Date**

20 Discovery has not yet commenced. The parties request no departure from the discovery
21 rules set forth in the Federal Rules of Civil Procedure and Civil Local Rules, including the 25-
22 interrogatory limit under Rule 33 and 10-deposition limit under Rule 30.

23 Defendant may require an independent medical examination of plaintiff, Ms. Mendez, to
24 assess the impact, if any, of her health background on the issue of causation.

25 Defendant will also require an independent medical examination of plaintiff Mendez by
26 a psychiatrist because plaintiff Mendez is claiming "serious emotional distress".

27 Given that several additional and different medical experts will also be required in
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addition to the above listed experts to assess causation as well as the standard of care, Defendant anticipates the need for five experts. No economic damages are alleged in this case

Parties anticipate taking discovery on the following subjects: the allegations of negligence, the issues of causation and standard of care as well as the scope, nature, and extent of plaintiff Mendez' alleged emotional distress damages.

9. Class Action

Not applicable.

10. Related Cases

There are no related cases.

11. Relief

Plaintiff seeks money damages of \$500,000 plus costs, reasonable attorney's fees and such other relief as the court deems proper.

Defendant seeks no damages in this action, other than dismissal and costs. Plaintiffs' administrative tort claim filed with the agency demanded \$500,000. In accordance with 28 U.S.C. § 2675(b), Plaintiffs can not recover more than the amount demanded in their administrative tort claim. In addition, California caps non-economic damages, defined as compensation for pain, suffering, inconvenience, physical impairment, disfigurement and other non-pecuniary injury, in medical malpractice cases at \$250,000. California Medical Injury Compensation Recovery Act ("MICRA"), Cal. Civ. Code §§ 3333.1 *et seq.* The damages cap applies whether the case is for injury or wrongful death, and the statute only allows one \$250,000 recovery in the aggregate for a single action, regardless of the number of plaintiffs.

21. Settlement and ADR

The parties have not participated in any settlement discussions, but have already agreed to mediation. Parties request that mediation not be automatically set for 90 days after the case management conference. Parties require that a fair bit of discovery be accomplished in order to have a productive mediation.

The parties have complied with ADR Local Rule 3-5.

13. Consent to Magistrate Judge

Parties do not consent to assignment of this case to a magistrate judge.

14. Other References

None at this time.

15. Narrowing of the Issues

None at this time.

16. Expedited Schedule

The parties do not believe an expedited schedule is appropriate for this case.

17. Scheduling

Proposed fact discovery cut-off: March 31, 2008

Proposed cut-off for initial expert reports: April 14, 2008

Proposed expert discovery cut-off: May 14, 2008

Proposed dispositive motion hearing cut-off: June 19, 2008

Proposed pretrial conference date: September 23, 2008

Proposed trial date: October 21, 2008

18. Trial

This bench trial is expected to last 5-7 days.

19. Disclosure of Non-Party Interested Entities or Persons

None known by the parties at this time. As a governmental agency, defendant is exempt from the disclosure requirement of Civil Local Rule 3-16.

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1 **20. Other Matters**

2 None at this time.

3 DATED: Aug 14, 2007

4 Respectfully submitted,

5 GWILLIAM, IVARY, CHIOSSO, CAVALI
6 & BREWER

7 _____
8 /s/
9 STEVEN J. BREWER
10 Attorney for Plaintiff

11 DATED: Aug. 14, 2007

12 SCOTT N. SCHOOLS
13 United States Attorney

14 _____
15 /s/
16 KATHERINE B. DOWLING
17 Assistant United States Attorney
18 Attorneys for Defendant

19 **[PROPOSED] ORDER**

20 The Case Management Statement and Proposed Order is hereby adopted by this Court as
21 the Case Management Order for the case and the parties are ordered to comply with this Order.

22 In addition, the Court orders:

23 IT IS SO ORDERED.

24 Dated: _____

25 _____
26 VAUGHN R. WALKER
27 United States District Court Judge